

**Editor's note: Reconsideration granted; decision modified in part by Order dated Dec. 14, 1989, found at 105 IBLA 210A and 210B, below.**

GARY MAUGHAN

IBLA 86-432

Decided November 2, 1998

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying a surface owner's protest of the sufficiency of a bond posted as surety for payment for surface damages incurred during the course of geophysical exploration for oil and gas. OR 13431 (WA)

Reversed.

1. Oil and Gas Leases: Bonds--Oil and Gas Leases:  
Stock Raising Homestead Act of 1916

A nationwide bond filed pursuant to 43 CFR 3045.4 by a party planning to conduct geophysical exploration for oil and gas on lands patented under the Stock-Raising Homestead Act of Dec. 29, 1916, as amended, 43 U.S.C. || 291-301 (1970), does not satisfy the requirements of sec. 9 of the Stock-Raising Homestead Act. 43 CFR Part 3045 is applicable only to those cases where the surface of the lands to be explored is owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management

APPEARANCES: J. Tappan Menard, Esq., Yakima, Washington, for appellant; D. Warren Hoff, Jr., Esq., Houston, Texas, for Shell Western E&P Inc.; Donald P. Lawton, Esq., Office of the Solicitor, Portland, Oregon, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

Gary Maughan (Maughan) has appealed a December 16, 1985, decision by the Oregon State Office, Bureau of Land Management (BLM), denying his protest of BLM's proposed determination that a \$1,000 performance bond would be sufficient to meet the bonding requirement of section 9 of the Stock-Raising Homestead Act (SRHA) and finding that a \$50,000 nationwide surety bond filed by Shell Western Exploration & Production, Inc. (Shell), pursuant to 43 CFR 3054.4 applicable to the bonding requirements under section 9 of SRHA.  
1/

---

1/ Act of Dec. 29, 1916, | 9, 43 U.S.C. | 299 (1970). The Stock-Raising Homestead Act was repealed by the Federal Land Policy and Management Act of 1976, P.L. 94-579, | 702, 90 Stat. 2789.

The bond was intended to cover contemplated geophysical exploration operations on the E\ E\ of sec. 10, T. 15 N., R. 24 E., Willamette Meridian, Grant County, Washington. 2/ Appellant is the owner of the surface estate of those lands, which were patented pursuant to SRHA. The same lands were also subject to oil and gas lease OR 13431 (WA), held by Shell. 3/

Shell approached Maughan and attempted to obtain Maughan's consent to enter the land to conduct oil and gas exploration by running almost 10 miles of seismic line through appellant's land. Shell states that Maughan offered to consent to entry for consideration in the range of \$11,000 to \$16,000, but refused to accept an offer of \$250 per mile of seismic line, and that no agreement for consensual entry could be reached. As a result, Shell modified its plan by reducing its proposed seismic work on Maughan's land to approximately one-quarter mile. The contemplated work was to involve 10 motorized vehicles and take approximately 6 days.

Shell then notified the BLM District Office of its desire to conduct oil and gas exploration activity. After corresponding with Maughan in an attempt to encourage the parties to reach an agreement for consensual entry, BLM called a meeting of the parties to discuss the proposed activity. At the meeting, which was held on September 30, 1985, the proposed activity and its potential impacts were discussed. BLM and Shell representatives then made an on-the-site inspection and discussed possible mitigating measures. Following the meeting the District Office issued a report to the Oregon State Office recommending that a \$1,000 (\$2,500 per acre) bond be required. 4/

On August 13, 1985, BLM wrote a letter to Maughan notifying him of the retained right to explore for and develop the Federal mineral estate underlying lands patented under SRHA, and informing him that if he was unable to reach an agreement for consensual entry, BLM would seek a performance bond in the amount of \$1,000 pursuant to section 9 of SRHA. Maughan responded by letter dated November 18, 1985, notifying BLM that he was appealing the determination and that "this bond should be set high enough to cover all potential damages - somewhere around \$200,000." Because the letter to Maughan was not a final determination, BLM properly treated Maughan's response as a protest. See 43 CFR 4.450-2.

On November 29, 1985, BLM sent a letter to Shell advising Shell that its determination that a \$1,000 bond would be required to meet the requirements of section 9 of SRHA was in error. BLM noted that Shell had an approved nationwide bond on file with BLM and concluded that a separate surface bond for the protection of the SRHA surface owner was not necessary.

---

2/ Shell also filed a sundry notice of intended geophysical exploration in sec. 2, T. 15 N., R. 24 E., Willamette Meridian, Grant County, Washington.

3/ We have been advised that oil and gas lease OR 13431 has expired, and thus the adequacy of a 43 CFR Part 3104 nationwide bond with respect to the lease is moot. However, the question of the adequacy of a bond for exploration activity is still before this Board. No leasehold is required for certain geophysical exploration activity. See 43 CFR Subpart 3045.

4/ The report noted that the fee simple interest in the surface estate was valued at approximately \$100 per acre.

On December 16, 1985, BLM issued a decision denying Maughan's protest. In the decision BLM noted that a copy of its November 29 letter to Shell had been sent to Maughan. Citing 43 CFR 3045.4, BLM concluded that, for oil and gas exploration, a \$25,000 statewide or \$50,000 nationwide bond was deemed sufficient to meet the bonding requirements, and that a separate bond was not required under SRHA or the regulations applicable to that act.

On appeal appellant states that the profitability of his ranching operation is directly dependent upon the quality of forage available. He expresses his concern that Knapweed seeds will be carried to his range land by Shell's motor vehicles and other equipment. Appellant states that Knapweed is on the State's list of noxious weeds, and that a Knapweed infestation would result in a dramatic reduction in the livestock carrying capacity of his land. He contends that a treatment program to control a Knapweed infestation must be conducted for a period of 10 years at a cost of approximately \$318 per acre, followed by spot spraying, and that the control program in itself has an adverse effect on the beneficial range forage grasses. He states that, because Knapweed is on the State's list of noxious weeds, if his lands became infested, he would be required by law to undertake the control program. In addition, Maughan alleges that the contemplated exploration activities outside of, but in close proximity to his property also pose a threat to his property. He argues that a Knapweed infestation could not be prevented and that the \$50,000 nationwide bond is inadequate to cover the potential cost of controlling Knapweed infestation and other damages which might occur as a result of Shell's contemplated operations. He estimates that a \$250,000 bond would be necessary to cover the cost of an eradication program.

Shell has appeared as an intervenor and filed an answer to Maughan's statement of reasons. Shell contends that appellant is estopped to request a bond amount which is greater than he had originally sought to obtain for a consensual entry. In addition, Shell states, appellant has not shown evidence that his lands are not already Knapweed infested or that appellant's activities on the property would not contribute to any infestation.

In its answering brief BLM states that a site inspection revealed sparse to moderate vegetation cover, consisting of sage brush and native grasses and that no Knapweed was identified in the immediate vicinity of the proposed activities. BLM notes that Shell had agreed to wash and inspect all vehicles prior to entering the subject area and suggested that appellant personally examine the vehicles to verify that the precautionary procedure has taken place. BLM indicates that "no significant infestation presently exists in the Saddle Mountains Area, notwithstanding the fact that numerous oil companies have completed exploration work in the area for the last seven years."

[1] Lands patented under SRHA are subject to the reservation of minerals to the United States. Section 9 of SRHA states:

Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon

securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entry-man or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or under- taking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior \* \*

The regulations at 43 CFR 3045.4 provide for the acceptance of a \$50,000 nationwide bond, covering all geophysical exploration for oil and gas in the nation, in lieu of a general bond. <sup>5/</sup> The bond amount may be increased at the discretion of the authorized officer when he or she deems additional coverage is needed to ensure protection of the lands and other resources. 43 CFR 3045.4(b).

In Coquina Oil Corp., 41 IBLA 248 (1979), the Board considered issues which at first appear to be analogous to those presented in the instant case. When considering the applicability of a nationwide bond the Board held that a nationwide bond for the protection of the surface owners would be adequate to protect the surface owner holding lands patented under SRHA. However, upon careful examination we find that case to be inapplicable to the present issues. The decision was based upon the regulations then in effect, and the regulations were substantially amended after the Coquina decision was rendered. First, there were no regulations pertaining to geo- physical exploration at that time. Second, the bonding requirements found at 43 CFR Subpart 3104 (1979) specifically provided that a separate bond was not required for the protection of the surface owner. The present regula- tions do not have this provision. Third, while the bonding requirements found at 43 CFR 3104 (1979) are analogous to those found in the regulations, that analogy lies in a comparison of the 1979 bonding regulations to those now found at 43 CFR 3104, and not those found at 43 CFR 3045.4. An impor- tant distinction is found in the regulations at 43 CFR Part 3045, and this distinction has a direct bearing upon the decision on appeal.

Under the regulations as now existing, 43 CFR Subpart 3045 is applica- ble to "activity on the public lands, the surface of which is administered by the Bureau of Land Management." 43 CFR 3045.0-5(a) (emphasis added). "Public lands" are defined as being "any lands, the surface of which is owned by the United States \* \* \* and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership." 43 CFR 3045.0-5(b) (emphasis added). Therefore, by definition exploration bonds submitted pursuant to 43 CFR 3045.4 are

---

<sup>5/</sup> This regulation also provides for a \$25,000 statewide bond covering all oil and gas exploration operations within a state as an alternative to the nationwide bond or a general bond covering a specific operation.

applicable only to geophysical exploration operations upon those lands the surface of which is owned by the United States and administered by the Secretary through BLM.

In the case before us, the surface of the lands in question is owned by Maughan. As the regulations now stand, a party seeking to do geophysical exploration on those lands where the surface has been conveyed out of Federal ownership by a patent issued under SRHA must post a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. 43 CFR 3814.1(c). The BLM determination that the geophysical exploration bond on file pursuant to 43 CFR Subpart 3045 would be applicable to exploration activities on lands, the surface of which is not owned by the United States, is in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

---

R. W. Mullen  
Administrative Judge

I concur:

---

Will A. Irwin  
Administrative Judge

IBLA 86-432, 105 IBLA 206	:	OR 13431 (WA)
	:	
GARY MAUGHAN	:	Bond for Oil and Gas Exploration
	:	
	:	Request for Reconsideration
	:	Granted
	:	
	:	105 IBLA 206 (1988)
	:	Modified in Part

### ORDER

On November 21, 1988, Shell Western Exploration & Production, Inc. (Shell), filed a request for reconsideration of the Board's decision in the above-cited case. Shell does not question our basic holding that a nation-wide bond filed pursuant to 43 CFR 3045.4 does not satisfy the requirements of section 9 of the Stock-Raising Homestead Act of December 19, 1916 (SRHA), as amended, 43 U.S.C. § 299 (1970), because 43 CFR Part 3045 applies only to those cases where the surface of the lands to be explored is owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management (BLM).

Rather, Shell expresses concern with the language found at page 210 of our decision in which we state that a party seeking to conduct geophysical exploration on lands where the surface estate has been patented under the SRHA must post a bond pursuant to 43 CFR 3814.1(c). Gary Maughan, 105 IBLA 206, 210 (1988). Shell argues that the SRHA and the regulations promulgated thereunder only require the posting of a bond when a party reenters the lands for the purposes of drilling for and producing oil and gas, not when a party initially enters the land to explore. See 43 U.S.C. § 299 (1970); 43 CFR 3814.1(b), (c). 1/

We find merit in Shell's argument regarding the bonding requirements found at 43 CFR 3814.1. The regulatory provision governing exploration and prospecting prior to leasing or mineral location is found at 43 CFR 3814.1(b), not 43 CFR 3814.1(c). The language of 43 CFR 3814.1(b) does not require the posting of a bond prior to acquiring a right to mine or remove the minerals. Accordingly, we strike the second sentence in the first full paragraph on page 210 of Gary Maughan, supra.

---

1/ BLM responded to Shell's request, suggesting that the Board vacate its decision and dismiss the case as moot.

We do not deem it necessary to determine whether 43 CFR 3814.1(c) applies when a person contemplating the geophysical work is a lessee. Shell's lease has expired and that issue is moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for reconsideration is granted, and the decision found at 105 IBLA 206 (1988) is modified in the manner above described.

---

R. W. Mullen  
Administrative Judge

I concur:

---

Will A. Irwin  
Administrative Judge

APPEARANCES:

Steven H. Sackmann, Esq.  
Sackman Law Office  
P.O. Box 409  
455 E. Hemlock  
Othello, Washington 99344

Donald P. Lawton, Esq.  
Office of the Regional Solicitor  
U.S. Department of the Interior  
500 N.E. Multnomah Street  
Suite 607  
Portland, Oregon 97232

William G. Riddoch, Esq.  
Shell Oil Company  
200 N. Dairy Ashford  
P.O. Box 576  
Houston, Texas 77001

